IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: **DOUGLAS REIMER** **Facility #62815** **Clayton County, Iowa**	ADMINISTRATIVE CONSENT ORDER NO. 2014-AFO-03

TO: Douglas Reimer
28478 Ironwood Road
Guttenberg, Iowa 52052

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Douglas Reimer for the purpose of resolving violations resulting from a manure discharge from Mr. Reimer's confinement operation that resulted in water quality violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:
Rick Martens, Field Office 1
Iowa Department of Natural Resources
909 West Street, Suite 4
Manchester, Iowa 52057
Phone: 563/927-2640

Relating to legal requirements:
Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/725-9572

Payment of penalty to:
Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1; Iowa Code chapter 459 and the rules adopted or permits issues pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Douglas Reimer owns and operates Deer Ridge SEW located in Section 2, Volga Township in Clayton County, Iowa. Deer Ridge SEW is a hog confinement operation with an animal capacity of 1,950 head of swine over 55 pounds and 250 head of swine 15 to 55 pounds (805 animal unit capacity). The facility is made up of two building sites. At 28478 Ironwood Road, Mr. Reimer's residence, are three confinement buildings with a 700 head capacity. Manure storage at this building site is an earthen basin. The second building site is located approximately ¼ mile north at 28010 Ironwood Road. At this location there are two confinement buildings with a 1,500 head capacity. Manure storage at this building is a formed storage structure. Manure is applied by a certified custom applicator and follows a manure management plan.

2. On June 28, 2013, DNR Field Office 1 received an anonymous complaint that manure was in a stream near Garnavillo, Iowa. The complainant stated that there was an unnamed stream along Jasmine Road south of Garnavillo that had been flowing the past few days and the water was very dark and foamy, with a manure odor.

3. On June 28, 2013, Rick Martens, DNR Field Office 1 environmental specialist, began investigating the complaint. A summary of the locations where Mr. Martens visited are noted below.

a. Mr. Martens began at the Jasmine Road Crossing of the South Cedar Creek. The stream appeared normal. Mr. Martens proceeded to a residence adjacent to the west bank (28906 Jasmine Road). Mr. Martens spoke to the owner, Jon Wilker. Mr. Wilker stated that both South Cedar Creek and the unnamed stream behind his house had recently flooded. Mr. Martens inspected the unnamed stream and noted turbid flowing water containing foam and a manure odor. The field tests indicated a high level of ammonia nitrogen.

b. Mr. Martens continued west on Jasmine Road following the unnamed stream. Mr. Martens conducted a field test on a tributary flowing into the unnamed stream and found no ammonia nitrogen. Mr. Martens inspected the unnamed stream at a lane crossing at the residence of Jeremy Parker (27761 Jasmine Road). The water was very dark and green in color, containing foam and a manure odor. The field tests indicated a high level of ammonia nitrogen.

c. Mr. Martens proceeded west on Jasmine Road and tested another tributary flowing into the unnamed stream and found no ammonia nitrogen. Mr. Martens continued to Mr. Reimer's residence; he noted a hose extending from the basin over the basin wall to a grassy area. Mr. Martens noted several pipes from the hog buildings entering the basin. The basin had a strong manure odor and was dark in color. There were several feet of freeboard available and the blue hose was not

discharging at the time. Mr. Martens continued to the confinement buildings at the 28010 Ironwood Road portion of the facility. No one was available at this location so Mr. Martens continued the investigation at other locations.

d. Mr. Martens returned to the Parker residence and collected a laboratory sample upstream of the lane crossing. The laboratory sample indicated an ammonia concentration of 220 milligrams per liter (mg/L). Mr. Martens then returned to the Wilker residence. Mr. Wilker explained that at the beginning of the week there had been a five inch rain fall followed by several smaller rain events.

e. Mr. Martens proceeded to the confluence of the unnamed stream and South Cedar Creek. Mr. Martens collected a laboratory sample approximately fifty feet upstream of the confluence in South Cedar Creek. The ammonia nitrogen concentration was 0.28 mg/L. The water was high and slightly turbid but there was no manure odor. A laboratory sample taken at the confluence of the unnamed stream and South Cedar Creek indicated an ammonia concentration of 36 mg/L. The water was more turbid than in South Cedar Creek and had a manure odor. Mr. Martens collected a laboratory sample approximately 50 feet downstream of the confluence in South Cedar Creek and the ammonia concentration was 3.7 mg/L. Mr. Martens did not observe a fish kill in this area.

f. Mr. Martens returned to the Reimer residence but no one was on site so he proceeded to the confinement site office building located at 28010 Ironwood Road. Mr. Martens met with Neil Morarend and Cecil Dempster, employees of Mr. Reimer. The employees stated that Mr. Reimer was not available and could not be reached. They were unaware of any manure reaching a stream and suggested that a nearby dairy facility might be the cause. Mr. Martens asked that Mr. Reimer contact him as soon as he returned.

g. Mr. Martens left the Reimer's site and travelled north on Ironwood Road and then east on 250th Street. He inspected two farm lanes off of Ironwood Road and a stream flowing south, adjacent to a dairy on 250th Street. He did not identify any potential manure sources and no ammonia nitrogen was present in the stream near the dairy.

h. Mr. Martens continued to the Kennedy Road crossing of South Cedar Creek. The bridge is approximately ¾ mile downstream of the unnamed stream confluence with South Cedar Creek. The laboratory sample indicated an ammonia concentration of 0.56 mg/L. Mr. Martens did not observe a fish kill in this area.

i. Mr. Martens returned to the Reimer's residence and met with Mr. Reimer. Mr. Martens discussed the complaint with Mr. Reimer and Mr. Reimer stated that a manure transfer above ground pipe leaked manure and manure entered a tile intake. Mr. Martens and Mr. Reimer walked to the pipe which served the 300 head confinement building which was on the up-gradient side of the manure basin

from where the blue hose was observed. The leaking manure was pooled in an area surrounding a tile intake. Mr. Reimer explained that the intake was placed to capture clean water prior to entry into the manure basin. Mr. Reimer stated the outlet for the tile was near the end of the grassed waterway, but before an earthen dike with a controlled outlet. He explained that if a manure release occurred at either of the building areas the outlet could be closed and the manure held in the waterway area. Mr. Martens told Mr. Reimer that the manure discharge must be stopped.

j. Mr. Martens and Mr. Reimer walked to the other side of the manure basin. The blue hose had been removed. Mr. Reimer stated that there had been heavy rain events the previous week that had filled the basin. He stated that the contents, mostly rain water, had been pumped to the grassed waterway. It is approximately 600 feet down gradient from the manure basin through the waterway to the earthen dike with outlet control. Mr. Martens collected a laboratory sample from the manure basin that indicated an ammonia concentration of 490 mg/L. The water was dark and turbid with a manure odor.

k. Mr. Martens returned to the Parker property and walked upstream following the unnamed stream west in the direction of the Reimer facility. He followed a small flow of water through wooded terrain. The water had a manure odor and the field test indicated a high level of ammonia nitrogen. There was some foam on the water with a bright green stain on the edge of the stream banks. The stream flow appeared to be receding. Mr. Martens also conducted field tests on the incoming flows, but none of them contained ammonia nitrogen.

l. Mr. Martens located the discharge pipe at the base of the earthen berm. The downstream area below the structure was heavily grassed, pooled with turbid gray water, with a strong manure odor. The laboratory sample indicated an ammonia nitrogen concentration of 27 mg/L. Mr. Martens crossed over the berm and noted a flow control structure in the center of the berm. From the berm Mr. Martens could see the Reimer's facility and grassed waterway. Mr. Martens inspected the grassed area between the dike and the waterway. The area was wet and muddy. It contained an intake to the dike. The pools of water field tested high for ammonia nitrogen and had strong manure odor. Mr. Martens noted a tile outlet in the grassed waterway with a small flow toward the earthen berm intake. A field test of the flow indicated a high level of ammonia nitrogen.

m. Mr. Martens observed a channelized cut in the grassed waterway a few feet from the tile outlet. The grass was matted and pointed down gradient. Field tests of pooled water indicated high levels of ammonia nitrogen. A laboratory sample of the water indicated an ammonia nitrogen concentration of 200 mg/L. Mr. Martens followed the channel up the waterway to the Reimer's basin. Mr. Martens did not observe any other source of the flow and did not observe any other discharges or pools of water.

n. Mr. Martens met with Mr. Reimer to discuss what Mr. Martens had observed. Mr. Reimer was surprised that manure had left his property, but stated that no inspection of the area near the outlet to berm had been made. He stated that he had told his employees to lower the manure basin the previous Tuesday night. He stated that the blue hose was a 1 1/2 "sump pump hose and he estimated that the pump ran most of the night. He estimated that about one foot of basin contents had been pumped into the grassed waterway. Mr. Martens and Mr. Reimer went to the Parker property and Mr. Martens provided Mr. Mr. Reimer with a field test of the water. The field test indicated a high level of ammonia nitrogen.

o. Mr. Martens met with Mr. Parker. Mr. Parker stated that the unnamed stream normally has no flow, but that he noted foam and manure odor the previous Wednesday. He said on Thursday the water was dark with a strong manure odor.

4. On June 29, 2013, Mr. Martens returned to the Wilker residence. The unnamed stream appeared to have a lower flow, but a field test indicated the presence of ammonia nitrogen in the water. Mr. Martens walked downstream in South Cedar Creek and found no dead fish and a field test did not indicate the presence of ammonia nitrogen.

5. On June 29, 2013, Mr. Martens proceeded to the unnamed stream located at the Parker residence. The field test indicated the presence of ammonia nitrogen and the water had a manure odor. The flow had receded and the edge of both banks had several inches of a bright green colored statin.

6. On July 3, 2013, DNR Field Office 1 received a correction plan of action from Mr. Reimer. The letter explained that the facility had opened a valve in the spring to let water flow through the berm. When he used the sump pump in June 2013 to remove some of the water from the basin he forgot to close the valve in the berm. Mr. Reimer stated this type of action would be avoided in the future.

7. On July 24, 2013, DNR Field Office 1 issued a Notice of Violation letter to Mr. Reimer for the water quality violations discovered by Mr. Martens during his June 2013 investigation. The letter required that Mr. Reimer submit a correction plan of action to the field office within 30 days of receipt of the letter. DNR Field Office 1 determined that the letter received by Mr. Reimer on July 3, 2013 satisfied the requirement to submit a correction action plan. DNR Field Office 1 determined that the actions taken by Mr. Reimer will systematically and permanently eliminate the cause of the discharge.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459A.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure

control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. Iowa Code section 455B.186 prohibits the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. During DNR Field Office 1's investigation it was determined that manure from the Reimer facility was discharged into a water of the state. The above-mentioned facts indicate violations of these provisions.

3. 567 IAC 65.2(3) states that the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to waters of the state. During DNR Field Office 1's investigation it was that manure from the Reimer facility had been discharged onto the ground and into a water of the state. The above facts indicate a violation of this provision.

4. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The laboratory results indicated elevated pollutants. Additionally, DNR Field Office 1 personnel observed turbid water as well as a manure odor to the water. The above mentioned facts indicate violations of the general water quality criteria.

V. ORDER

THEREFORE, the DNR orders and Doug Reimer agrees to do the following:

1. Mr. Reimer shall pay an administrative penalty in the amount of $6,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to $5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to $10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing

the above-cited violations is the issuance of an administrative consent order with an administrative penalty of $6,000.00. The administrative penalty is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Mr. Reimer gained an economic benefit by failing to properly contain the manure from his facility. Mr. Reimer directed his employees to discharge confinement manure to a grassed waterway. This was a violation of his manure management plan and allowed him to avoid the costs associated with proper land application. These costs would have included hiring a commercial applicator or obtaining the proper application equipment. Additionally, Mr. Reimer delayed the costs associated with proper maintenance of the equipment at his facility. Mr. Martens observed a leaking transfer pipe that appeared to be an ongoing problem at the facility. Based on the above facts, the economic benefit Mr. Reimer received was at least $2,000.00 and that amount is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. DNR Field Office 1 documented a manure discharge that led to documented water quality violations. These violations threaten the integrity of the regulatory programs because compliance with animal feeding operation requirements is required of all persons in this state. Therefore, $2,000.00 is assessed for this factor.

Culpability –Mr. Reimer has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Mr. Reimer directed his employees to release manure to a grassed waterway but made no effort to verify the secondary containment valve was open or shut. Additionally, Mr. Reimer was aware of the leaking transfer pipe but made no effort to correct the problem until alerted by the DNR to do so. Therefore, $2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Douglas Reimer. For that reason Douglas Reimer waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

Chuck Gipp

CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 4th day of February, 2014.

Douglas Reimer

DOUGLAS REIMER

Dated this 22nd day of January, 2014.

Facility #62815; Kelli Book, DNR Field Office 1, EPA, VIII.D.1.B and VIII.D.3.a